

# Developer's case denied by court

## Project would affect endangered arroyo toads

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A San Diego developer that wants to build homes near Fallbrook in an area inhabited by the endangered arroyo toad had its request for an appeal denied in federal court yesterday.

The U.S. District Court for the District of Columbia rejected Rancho Viejo LLC's request for reconsideration of the suit it lost challenging the constitutionality of Secretary of the Interior Gale Norton's actions.

The status of the housing development wasn't immediately clear. Company officials could not be reached for comment yesterday.

The 280 homes would be built on 202 acres in an unincorporated area southeast of Interstate 15 and state Route 76. The company wanted to use dirt from Keys Creek for fill, and it had begun some work near the bank of the streambed.

The U.S. Fish and Wildlife Service objected, saying the project would harm the habitat of the endangered arroyo southwestern toad, thus violating the federal Endangered Species Act.

The agency suggested the company use fill dirt from land outside the toad's habitat, but the company declined and instead sued Norton, arguing that the federal government's application of the Endangered Species Act was unconstitutional.

In April, a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit upheld a lower court's decision to dismiss Rancho Viejo's lawsuit, saying the project would compromise the toad's habitat.

David Hogan, urban wildlands project coordinator for the nonprofit Center for Biological Diversity, said yesterday's decision was an important one.

The toad, which is found in California and northern Baja California, depends on unspoiled streams and riverbeds for reproduction and feeding, Hogan said. Its presence, he said, is an indicator of water quality.

"The arroyo toad is highly dependent on pristine Southern California streams and rivers," Hogan said. "When the arroyo toad disappears we know those waters have been highly polluted or destroyed, therefore resulting in harm to human health and human water supplies."